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**Supreme Court of the United States**

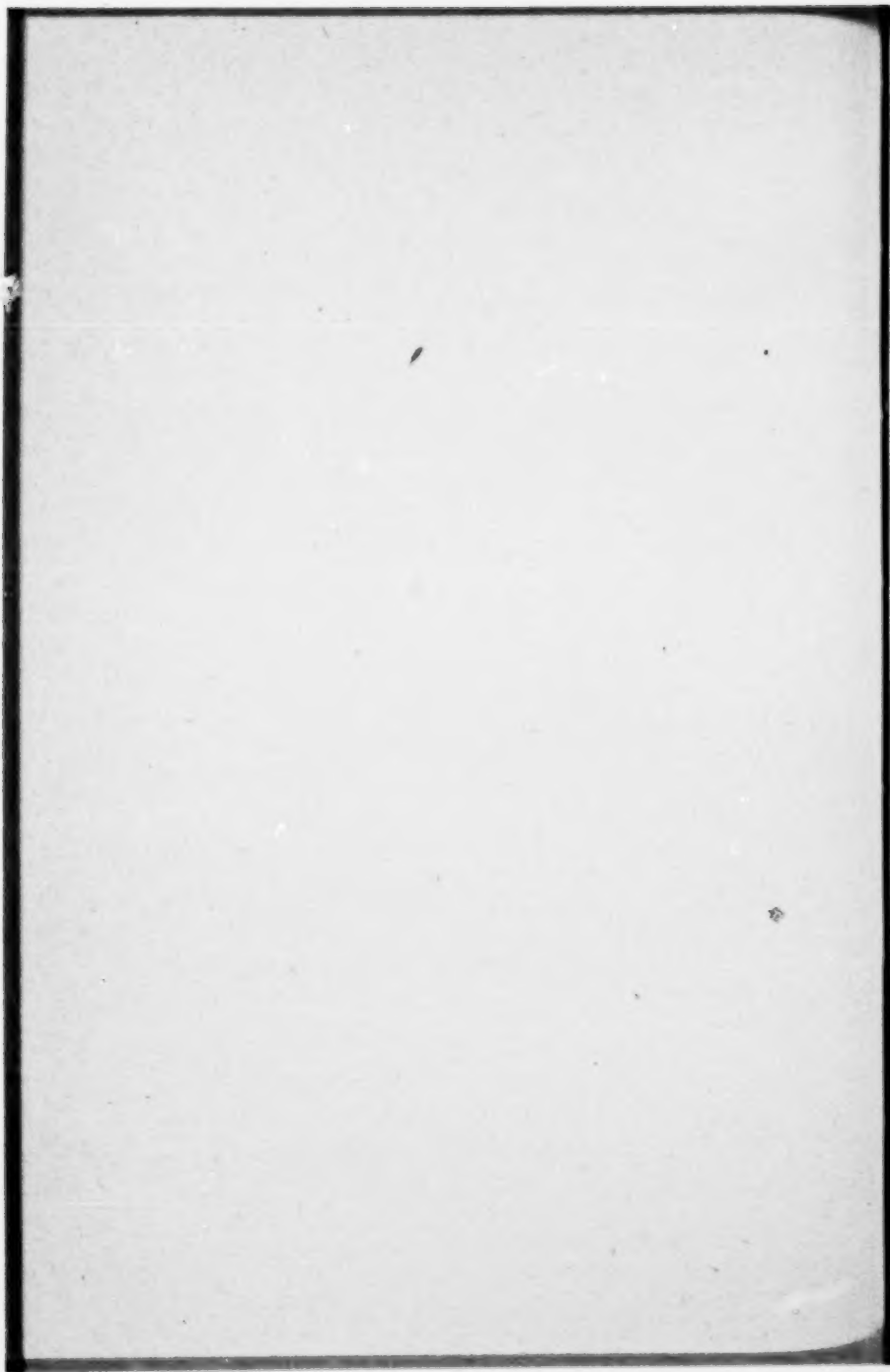
OCTOBER TERM, 1945.

CLARK OIL COMPANY AND PLYMOUTH CLARK OIL COMPANY,  
*Petitioners,*  
vs.

PHILLIPS PETROLEUM COMPANY, THE PURE OIL COMPANY,  
STANDARD OIL COMPANY (INDIANA), SINCLAIR REFINING  
COMPANY, SHELL PETROLEUM CORPORATION, SOCONY-VAC-  
UUM OIL COMPANY, INCORPORATED, SKELLY OIL COMPANY,  
CONTINENTAL OIL COMPANY, AND CITIES SERVICE OIL COM-  
PANY,  
*Respondents.*

PETITION FOR WRIT OF CERTIORARI TO THE  
UNITED STATES CIRCUIT COURT OF APPEALS FOR  
THE EIGHTH CIRCUIT AND BRIEF IN SUPPORT  
THEREOF

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OCTOBER TERM, 1945.

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*Petitioners,*

*vs.*

PHILLIPS PETROLEUM COMPANY, THE PURE OIL COMPANY,  
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UUM OIL COMPANY, INCORPORATED, SKELLY OIL COMPANY,  
CONTINENTAL OIL COMPANY, AND CITIES SERVICE OIL COM-  
PANY,  
*Respondents.*

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## PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT

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*To the Honorable, the Supreme Court of the United States:*

Come now the Clark Oil Company and the Plymouth Clark Oil Company, the above-named Petitioners, and file this, their Petition for a Writ of Certiorari in the above matter, and respectfully show to the Court:

1. That the matter involved arises out of the *Madison Oil* conspiracy case, 310 U. S. 150, 60 S. Ct. 811, 84 L. ed. 1129, and is a claim for damages by Petitioners, oil jobbers, against the Respondents because of overcharges made in the sale of gasoline because of a conspiracy to raise the prices of gasoline, for which conspiracy Respondents were duly convicted.

2. That this Court has jurisdiction because the action is one to recover damages under the Sherman Anti-Trust Act of July 2, 1890, Chapter 647, 26 Stat. 209, Title 15, Mason's U. S. Code, Sec. 1, U. S. C. A., Title 15, Sec. 7, and the Clay-

ton Act, Title 15, Sec. 15, Mason's U. S. Code, 15 U. S. C. A. 15.

3. That the questions presented by this writ are:

(A) Whether oil jobbers may recover as damages an overcharge of  $2\frac{1}{4}\text{¢}$  per gallon for gasoline purchased by them from producing oil companies, where the overcharge was the result of a completed conspiracy to violate the Sherman Anti-Trust Act.

(B) Whether the fact that the gasoline so purchased by the jobbers from the conspirators was later sold "in the ordinary course of business" prevents the jobbers from recovering the overcharge or illegal exaction of  $2\frac{1}{4}\text{¢}$  per gallon, made because of the conspiracy.

(C) Whether the oil companies may keep their illegal exactions so made and cannot be made to repay them to the jobbers from whom they made such illegal exactions.

4. That the reasons relied on for the allowance of the writ are the following:

(A) That because of a completed conspiracy to violate the Sherman Anti-Trust Act, the Respondents, being major oil companies, illegally exacted from Petitioners, oil jobbers,  $2\frac{1}{4}\text{¢}$  per gallon more for gasoline which they purchased than they would have paid but for the conspiracy; that upon a complaint alleging such facts the District Court entered a summary judgment against Plaintiffs (Petitioners here).

(B) That the Circuit Court of Appeals of the Eighth Circuit erroneously affirmed the District Court and held that the major oil companies, Respondents, were not, in the first instance, liable for the illegal exaction of  $2\frac{1}{4}\text{¢}$  per gallon, as alleged in the complaint. (Complaint, Par. 19, R. 71-72; Opinion, R. 135; Complaint, Par. 26, R. 74.)

(C) That the Circuit Court of Appeals of the Eighth

Circuit further erroneously held that even if the major oil companies were, in the first instance, liable for the illegal exaction of  $2\frac{1}{4}\phi$  per gallon, the Petitioners could not recover this illegal exaction because they sold the gasoline so purchased "in the ordinary course of business" (Opinion, R. 135, 138, 139, 141).

(D) That the Petitioners were deprived of their right to a jury trial.

(E) That Petitioners, because of the conspiracy, were forced to pay money out of pocket which they would not have had to pay but for the conspiracy, and were injured in their business and property.

(F) That Respondents, conspirators, have retained their illegal exactions so made of Petitioners.

(G) That a final judgment on the pleadings and a pre-trial hearing was erroneously entered against Petitioners by the Circuit Court of Appeals on the 11th day of April, 1945, (R. 142-143), denying them a right of recovery of the illegal exactions made by the conspirators, Respondents.

(H) That the judgment of the Circuit Court of Appeals of the Eighth Circuit is in conflict with the spirit of the Sherman Anti-Trust Act and contrary to the trend of the decisions of this Court.

(I) That the decision of the Circuit Court of Appeals of the Eighth Circuit, holding that plaintiff must sue for profits ("plaintiff's right of recovery from defendants is dependent upon both the buying and selling prices," Opinion, 8th Cir., R. 139), is in conflict with the decision of the Circuit Court of Appeals of the Second Circuit, 297 Fed. 791-803, wherein the Second Circuit held that whether "plaintiffs sold to their customers at a profit or loss becomes immaterial in this case" where there was an over-charge due to a conspiracy.

(J) That although the decision of the Circuit Court of Appeals for the Eighth Circuit is contrary to the general rule prevailing in this Court, the precise question has never been determined; that many cases await a decision of the points here raised.

5. That a Writ of Certiorari should be granted herein because the judgment of the Circuit Court of Appeals is final but is wrong, contrary to law, and in conflict with the holding of the Second Circuit and with the general holdings of the Supreme Court of the United States, although the definite and precise question has never been decided by the Supreme Court.

#### BRIEF SUMMARY OF FACTS INVOLVED

Petitioners were oil jobbers. As alleged in the complaint, they purchased large quantities of oil from the Phillips Petroleum Company, their supplier (Complaint, Par. 26, R. 74). That company and the other Respondents were, concededly, on the motion for summary judgment, guilty of a conspiracy to violate the laws of the United States by raising the prices of gasoline (Complaint, Par. 22, R. 72-73). Their conviction was upheld in *U. S. vs. Socony-Vacuum Oil*, 310 U. S. 150, 60 S. Ct. 811, 84 L. ed. 1129.

The District Court on a motion for summary judgment on the complaint, plus a statement made at a pre-trial hearing, entered judgment for Defendants. The Circuit Court of Appeals of the Eighth Circuit affirmed. The case is reported in 148 Fed. (2d) 580 (R. 135-142).

(For convenience of this Court in referring to the opinion of the Circuit Court, we will refer to the pages of the transcript of Record wherein the opinion is incorporated. The opinion appears on pages 135-142.)

The complaint and pre-trial hearing disclosed:



1. That the Defendants had been convicted of a conspiracy to raise the price of gasoline (Complaint, Par. 22, R. 72-73).

2. That the price of gasoline purchased by the jobbers, the above Petitioners, was  $2\frac{1}{4}\text{¢}$  more per gallon than it would have been but for the conspiracy (Complaint, Par. 19, R. 71-72; Par. 26, R. 74).

3. That Petitioners had to pay  $2\frac{1}{4}\text{¢}$  per gallon more out of pocket than they would have but for the conspiracy (Complaint, Par. 26, R. 74).

4. That the gasoline so purchased was later sold by the jobbers in the ordinary course of business (R. 113, pre-trial hearing).

The District Court stated the facts as follows:

"The defendants herein have been found guilty of violating the Sherman Anti-Trust Act by their actions of which plaintiffs now complain, and that conviction was sustained by the United States Supreme Court in *United States vs. Socony-Vacuum Oil Company, Inc., et al.* (1940), 310 U. S. 150. Consequently, there is *no question at this time as to whether defendants have committed an act forbidden by the anti-trust law.* The only issue pertains to plaintiffs' right to recover as a 'person \* \* \* injured in his business or property'" (R. 115-116).

The District Court entered judgment against Plaintiffs, holding:

(A) That the conspirators were not in the first instance liable for the illegal exaction of  $2\frac{1}{4}\text{¢}$  per gallon charged the jobbers.

(B) That the fact that the Plaintiffs (Petitioners here) sold the gasoline "in the ordinary course of business" prevented them from recovering the illegal exaction made in the first instance by the conspirators.

(C) That, in effect, the Defendants (Respondents here), conspirators, were entitled to keep their illegal exactions.

The Circuit Court of Appeals affirmed the judgment entered by the District Court (148 Fed. (2d) 580) (R. 135-142). To review the judgment so rendered this writ is sought.

WHEREFORE, because

(A) the judgment of the Circuit Court of Appeals is final but wrong; and (B) because the judgment of the Circuit Court of Appeals is contrary to the rule in the Second Circuit and to the general rule prevailing in the Supreme Court of the United States, although the precise question has never been determined; and (C) because Petitioners were deprived of money and overcharged as a result of the conspiracy and forced to pay money out of pocket which they would not have had to pay but for the conspiracy—

Your Petitioners respectfully pray that a Writ of Certiorari be issued under the seal of this Court, directed to the United States Circuit Court of Appeals for the Eighth Circuit, sitting at St. Louis, Missouri, commanding that Court to certify and send to this Court on a day to be designated a full and complete transcript of the Record and the proceedings in the Circuit Court of Appeals in said cause, being No. 12,950 and entitled "*Clark Oil Company, et al., Appellants, vs. Phillips Petroleum Oil Company, et al., Appellees,*" and that the judgment of the Circuit Court of Appeals be reversed by this Honorable Court, and that your Petitioners have such other relief in the premises as to the Court may seem proper.

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